

AMENDED IN SENATE APRIL 19, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1351**

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**Introduced by Senator Wright**

February 19, 2010

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An act to add Sections 11346.6 and 11346.65 to the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1351, as amended, Wright. State agencies: regulation adoption requirements.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill would require an agency, *in specified circumstances*, that adopts a regulation that requires the use of a new or emerging technology or equipment in order to achieve the identified purpose of the regulation to post, as specified, upon the effective date of the regulation, that the required technology or equipment is commercially available or will be commercially available prior to the effective date of the regulation. This bill would, if the required technology or equipment is not commercially available on the effective date of a regulation, prohibit an agency from enforcing a violation of the regulation until at least 6 months after the technology or equipment becomes commercially available and the agency posts that information, as specified.

This bill would require an agency to make any implementation schedule, procedure, or form that is necessary for *initial* compliance with a proposed regulation available to the public upon the agency's

final adoption of that regulation. The bill would, if the implementation schedule, procedure, or form necessary for *initial* compliance with the regulation, *as adopted*, is not available on the effective date of the *adopted* regulation, prohibit an agency from enforcing a violation of the *adopted* regulation for at least 6 months after the implementation schedule, procedure, or form becomes available and the agency posts that information, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) This state has some of the most extensive and detailed  
4 regulatory requirements in the nation which can also lead to  
5 significant financial penalties for noncompliance.

6 (b) It is in the best interests of the public good and the regulated  
7 business community that regulations are fully complied with. In  
8 order to ensure full compliance, regulations should clearly set forth  
9 adequate notice of clear enforcement timelines, provide all  
10 necessary forms and other necessary compliance tools well in  
11 advance for proper planning and implementation, *particularly*  
12 *during the initial implementation*, and ensure that any technologies  
13 required for compliance are in fact commercially available in  
14 adequate supply.

15 (c) There are numerous examples of regulations affecting the  
16 state's economy and the public health that did not provide adequate  
17 notice and compliance tools, which put the regulated business  
18 communities at risk of noncompliance and thereby reduced its  
19 ability to properly implement state law.

20 (d) It is, therefore, the intent of the Legislature that the  
21 regulatory bodies of this state, to the maximum extent possible  
22 and with reasonable advance notice before a regulation goes into  
23 effect, identify all mandatory deadlines, provide all necessary  
24 compliance tools, and ensure that required compliance technologies  
25 are commercially available.

26 SEC. 2. Section 11346.6 is added to the Government Code, to  
27 read:

1 11346.6. (a) An agency that adopts a regulation that requires  
2 the use of a new or emerging technology or other equipment in  
3 order to achieve the identified purpose of the regulation shall post  
4 on its Internet Web site, if available, and in the California  
5 Regulatory Notice Register, upon the effective date of the  
6 regulation, that the required technology is commercially available  
7 or will be commercially available prior to the effective date of the  
8 regulation.

9 (b) Notwithstanding any other law, if a new or emerging  
10 technology or other equipment, whose use is required by a  
11 regulation, is not commercially available on the effective date of  
12 the regulation, the adopting agency shall not enforce a violation  
13 of that regulation until at least six months after the required  
14 technology or other equipment becomes commercially available  
15 and the agency posts on its Internet Web site, if available, and in  
16 the California Regulatory Notice Register, that the required  
17 technology or other equipment has become commercially available.

18 (c) Nothing in this section shall be construed to require an  
19 agency to readopt a regulation already approved by the office and  
20 filed with the Secretary of State.

21 *(d) An agency shall not be required to comply with the*  
22 *requirements of this section if an adopted regulation that requires*  
23 *the use of a new or emerging technology or other equipment*  
24 *imposes that requirement on the industry that is directly*  
25 *responsible for developing or manufacturing the new or emerging*  
26 *technology or other equipment as a part of that industry's core*  
27 *business.*

28 *(e) Nothing in this section shall be construed to prohibit an*  
29 *agency from adopting new or additional standards for new or*  
30 *emerging technology or other equipment.*

31 SEC. 3. Section 11346.65 is added to the Government Code,  
32 to read:

33 11346.65. (a) An agency shall make any implementation  
34 schedule, procedure, or form that is necessary for *initial* compliance  
35 with a proposed regulation available to the public upon the  
36 agency's final adoption of that regulation.

37 (b) Notwithstanding any other law, if an implementation  
38 schedule, procedure, or form that is necessary for *initial* compliance  
39 with the regulation, *as adopted*, is not available to the agency as  
40 of the effective date of ~~the~~ *that adopted* regulation, the adopting

1 agency shall not enforce a violation of that *adopted* regulation  
2 until at least six months after the implementation schedule,  
3 procedure, or form becomes available and the agency posts on its  
4 Internet Web site, if available, and in the California Regulatory  
5 Notice Register, that the required implementation schedule,  
6 procedure, or form has become available.

7 (c) Nothing in this section shall be construed to require an  
8 agency to readopt a regulation already approved by the office and  
9 filed with the Secretary of State.